

October 4, 2017

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Notice of ex parte from the Gila River Telecommunications, Inc.  
Connect America Fund, WC Docket No. 10-90, CC Docket No. 95-155*

Dear Ms. Dortch:

By this letter, and pursuant to Section 1.1206 of the Commission's rules,<sup>1</sup> Gila River Telecommunications, Inc. (GRTI) provides notice of a letter it received from the National Exchange Carriers Association (NECA) concerning GRTI's estimated expense universal service high-cost loop adjustment for 2018. NECA's letter estimates GRTI's expense adjustment for 2018 will be approximately 19 percent, which is up from the 16 percent reduction GRTI incurred in 2016. As GRTI has previously stated in its petitions, these reductions are well in excess of what the Commission stated it believed the adjustment would be for even the highest cost carriers.<sup>2</sup> Unfortunately, these annual reductions are part of a trend that will continue downward.<sup>3</sup>

Please direct any questions to the undersigned.

Gregory W. Guice  
Akin Gump Strauss Hauer and Feld LLP  
1333 New Hampshire Avenue, NW  
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(202) 887-4565  
Counsel for Gila River Telecommunications, Inc.

<sup>1</sup> 47 C.F.R. § 1.1206.

<sup>2</sup> Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd.15644, 15682, para. 108 (2014) ("the highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receive only three percent less than it would receive under the Commission's proposal))."

<sup>3</sup> Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (May 19, 2017) (available at <https://ecfsapi.fcc.gov/file/105200326413636/2017%20NACPL%20Waiver%20Update.pdf>).

October 4, 2017

VIA COURIER

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, DC 20534

Re: In the Matter of Connect America Fund, et al., WC Docket Nos. 10-90, 14-58,  
07-135, 14-192, CC Docket No. 95-155

Dear Ms. Dortch:

In conjunction with this ex parte, Gila River Telecommunications, Inc. (“GRTI”) hereby submits the attached financial information concerning GRTI’s historical and projected telecommunications revenues and expenses. Pursuant to 47 C.F.R. §§ 0.457, 0.459, GRTI requests confidential treatment for the company-specific, commercial information in the attached exhibit. The confidential information has been redacted from the versions of the exhibit electronically filed with the Commission (“Commission”).

GRTI is providing the attached NECA letter and high-cost loop expense adjustment information in conjunction with its pending waiver request.<sup>1</sup> As the Commission noted in the *Fifth Order on Reconsideration*, carriers filing waiver requests may seek confidential treatment pursuant to Commission rules.<sup>2</sup>

As discussed herein, the data being submitted by GRTI consists of information on its financial condition, including its overhead and operating costs, which is some of its most commercially sensitive information.<sup>3</sup> The information is being provided voluntarily to the

<sup>1</sup> Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (May 19, 2017) (available at <https://ecfsapi.fcc.gov/file/105200326413636/2017%20NACPL%20Waiver%20Update.pdf>).

<sup>2</sup> *Id.* at 14559, para. 24.

<sup>3</sup> See *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C.Cir.1974); *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C.Cir. 1992) (en banc).

Commission to assist the Commission in making its determination on GRTI's petition for waiver and would not be provided if it were subject to public disclosure. This financial information is treated as confidential by GRTI and is not released by GRTI to the public and significantly, its disclosure would deter GRTI and others from providing such information to the Commission in the future given the sensitive nature of the information. Moreover, disclosure of GRTI's confidential information would place GRTI at a significant competitive disadvantage.

For these reasons, GRTI is claiming protection from disclosure for the information submitted herewith pursuant to exemption 4 of the Freedom of Information Act ("FOIA"), and the Commission's rules, and requests that such information be withheld from public inspection.<sup>4</sup> Specifically, pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, FCC 98-184, 13 FCC Rcd 24816, (rel. Aug. 4, 1998) ("*Confidential Information Order*") and in accordance with FOIA and the Commission's Rules related to public information and inspection of records, *e.g.* 47 C.F.R. §§ 0.457 and 0.459, GRTI hereby submits this request for confidential treatment of all of the information submitted herewith to the Commission.

**Statement pursuant to 47 C.F.R. § 0.459(b)**

**(1) Identification of the specific information for which confidential treatment is sought.**

All of the information provided in Attachment A and redacted in the public version is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Section 0.456(a) of the Commission's Rules, GRTI requests that such information not be made available for public inspection. The information includes, *inter alia*, information regarding GRTI's historical telecommunications revenues and expenses.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.**

The information is being provided to the Commission in conjunction with a petition for waiver in the proceeding referenced in the caption of this letter request.

**(3) Explanation of the degree to which the information contains trade secrets or is commercial or financial, or contains a trade secret or is privileged.**

<sup>4</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d) (exempting from disclosure "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

The information is of the kind that has been found by courts to be commercial or financial information.<sup>5</sup> Additionally, this information is treated by GRTI as confidential information, given that it contains commercially sensitive historical financial information (including information regarding telecommunications revenues and expenses).

**(4) Explanation of the degree to which the information concerns a service that is subject to competition; and**

The records being provided to the Commission involve telecommunications services provided by GRTI in competition with other carriers and service providers. Telecommunications is a highly competitive industry, and GRTI's services are subject to competition. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by GRTI should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 630 (D.C. Cir. 1979).

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial or financial information of a person unless there is an overriding public interest reason requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.<sup>6</sup> For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.<sup>7</sup> The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong,

<sup>5</sup> See *Washington Post Co. v. HHS*, 690 F.2d 252, 266 (D.C.Cir. 1982).

<sup>6</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>7</sup> *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765.

it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by GRTI falls within Exemption 4.

The data being provided to the Commission are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside GRTI. Disclosure would subject GRTI to substantial competitive harm.

The data being provided to the Commission consists of information pertaining to GRTI's historical telecommunications revenues and expenses and thus represent confidential commercial information that should not be released under the FOIA. Competitors could use the confidential information to assist in their valuation of GRTI's assets and services that would not otherwise be available. Such information could help competitors target their service offerings and enhance their competitive positions, to the detriment of the competitive position of GRTI. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9<sup>th</sup> Cir. 1994).

**(6) Identification of any measures taken to prevent unauthorized disclosure.**

GRTI routinely treats the redacted information as highly confidential and exercises significant care to ensure that such information is not disclosed to its competitors or the public.

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

GRTI does not make the redacted information available to the public, and this information has not been previously disclosed to third parties.

**(8) Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.**

GRTI requests that the redacted information be treated as being confidential on an indefinite basis as it cannot identify a date certain on which this information could be disclosed without causing competitive harm to GRTI.

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.<sup>8</sup> Specifically, the Commission has recognized

<sup>8</sup> *See e.g., In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618, November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded*

that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. *See In re Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).<sup>9</sup> The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided assurances that it recognizes the importance of avoiding "unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."<sup>10</sup> Accordingly, GRTI requests that the information submitted herewith be withheld from public inspection.

If you have any questions concerning the foregoing, please contact the undersigned at 202-887-4565.

Sincerely,

Gregory W. Guice, Esq.

Enclosures

*Interconnection Through Virtual Collocation for Special Access and Switched Transport: Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998) (keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994) (keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records*, 45 RR 2d 1705 (1979) (keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (July 17, 2000) (keeping confidential marketing plans and strategy information).

<sup>9</sup> Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

<sup>10</sup> *Confidential Information Order* at ¶8.



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North Central Region  
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**For your information**  
**2018 estimated USF HCL expense adjustment**

October 2, 2017

TO: General and USF contacts at legacy rate-of-return companies

**USF filing**

On September 29, 2017, we filed your USF High Cost Loop data with the FCC and USAC. Along with the amounts you reported to us, we filed the unseparated revenue requirement, loop cost, and projected expense adjustment amounts we calculated based on your data. We also filed the number of exchanges you have listed in NECA's Customer Database. **The filed projected expense adjustment amounts include the effect of the limitations on corporate operations expense and operating expenses and an authorized rate of return of 10.625 percent (a blend of 10.75 percent for the January through June 2018 period and 10.50 percent for the July through December 2018 period). The projected expense adjustments do not reflect potential adjustments made by USAC for the \$250 support cap, the rate floor adjustment and the overall budget control mechanism.**

**Your estimated expense adjustment is attached**

Your estimated expense adjustment based on the frozen NACPL of \$647.87 is provided in Attachment 1. The initial pro rata adjustment necessary to satisfy the overall cap in funding is 0.811514. Your expense adjustment will change throughout the year due to data corrections and other revisions, voluntary quarterly data updates submitted by your company and/or other companies that might necessitate changes to the pro rata adjustment factor.

We anticipate the pro rata adjustment factor in 2018 to decrease from the initial filed amount to keep the high cost loop fund under the cap. Decreases in the pro rata adjustment factor typically result in reductions in individual company expense adjustment amounts, especially for those companies not submitting revisions or quarterly updates.

**Questions?**

If you have questions, please contact your member service team.

Sincerely,

A handwritten signature in black ink that reads "Carol A. Brennan". The signature is written in a cursive, flowing style.

Carol A. Brennan

Attachments

cc: Authorized consultants



**Universal Service Fund  
High Cost Loop Support**

**Study Area: 452179 GILA RIVER TELECOM.**

<b>Expense Adjustment Projection for 2018 (Data as of September 29, 2017)</b>		
1.	USF Unseparated Revenue Requirement	
2.	USF Loops	3,669
3.	Study Area Cost Per Loop	
4.	Preliminary Estimated 2018 Annual Expense Adjustment (applying the frozen NACPL)	
5.	Estimated 2018 Pro Rata Adjustment Factor	0.811514
6.	Estimated 2018 Annual Expense Adjustment * (applying the pro rata adjustment factor)	

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**National Average Cost Per Loop Trend (NACPL) Trend**

Payment Year	Filed View	Latest View
2014	\$596.07	\$603.79
2015	\$632.93	\$647.18
2016 (frozen)	\$647.87	\$647.87
2017 (frozen)	\$647.87	\$647.87
2018 (frozen)	\$647.87	\$647.87

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**Notes:**

\* This amount excludes any potential effects of the \$250 cap, the impact of any rate floor adjustments, and the impacts of the budget control mechanism. This estimate is provided for informational purposes only. Actual support may differ.